



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John E. Denton

File: B-221252

Date: September 19, 1986

DIGEST

1. Claims for accrued annual leave are subject to the Barring Act (31 U.S.C. § 3702(b)) forever eliminating claims cognizable by the Comptroller General unless received in the General Accounting Office within 6 years after the claim accrues. Since annual leave claims involve money and are not exclusively decided by agencies other than the General Accounting Office, they are cognizable by the Comptroller General. The claim accrual date when the 6-year limitation period begins to run is the date liability is fixed and is ordinarily upon completion of each biweekly pay period when annual leave is earned.

2. The Barring Act (31 U.S.C. § 3702(b)) forever eliminated a Federal civilian employee's retroactive claim for 302 hours of additional annual leave allegedly accumulated between 1975 and 1979 at the rate of 8 hours each biweekly pay period, based on 20 years of creditable service on the date of the employee's appointment in 1975. Approximately 4 years after the appointment, the employing agency received notice that the employee's military disability retirement resulted from a disability incurred in combat, entitling the employee to 20 years of credit for civilian leave purposes based on his prior military service, and therefore 8 hours leave per pay period. Since the employee did not file a claim with the General Accounting Office within 6 years of the final pay period in 1979 covered by the claim his claim may not be considered.

DECISION

As they acquire more years of "creditable service," comprised generally of Federal employment and certain military service, Federal employees earn annual leave at progressively higher rates each biweekly pay period--4 hours per pay period with less than 3 years of creditable service, 6 hours per pay period plus 4 additional hours annually after 3 years of creditable service, and 8 hours per pay period after 15 years of creditable service. See 5 U.S.C. § 6303(a).

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In this case, Mr. John E. Denton, a civilian employee of the Marine Corps, claims that he is entitled to 308 additional hours of annual leave. He suggests that on the date of his appointment in 1975 he had 20 years of prior creditable service and from that day forward he should have accumulated 8 hours annual leave each pay period. We decide that his claim is time barred because he did not file it in the General Accounting Office within 6 years after it accrued as required by 31 U.S.C. § 3702(b).

Background

On December 18, 1975, the Marine Corps appointed Mr. Denton to a civil service position with 10-point veterans preference as a disabled veteran retired from the military. To establish his correct annual leave earning rate and for other purposes, the Marine Corps twice revised the length of "creditable service" he had acquired previous to the December 18, 1975 appointment date. For each revision, the calendar days of previously acquired creditable service were subtracted from the appointment date to establish a revised "service computation date." Total creditable service could then be counted forward from the service computation date to any future time when it was necessary to determine or change his annual leave earning rate. See Federal Personnel Manual Supplement No. 296-31, Appendix B.

The first revised determination of creditable service became effective March 2, 1976, when the Marine Corps changed the service computation date to December 8, 1974. Evidently there was verification of certain military service during wartime justifying approximately 1 year and 10 days of additional creditable service. This change does not appear to have increased Mr. Denton's leave earning rate, but it indicates that the employing office took action to communicate with the appropriate agencies and Mr. Denton in order to determine his creditable service based on his status as a military disability retiree.

The second revision superseded the first. On November 4, 1979, the service computation date was changed to September 25, 1955, after the Staff Judge Advocate, Department of the Navy, had verified that Mr. Denton's military disability retirement was based on a disability received in

the line of duty and caused by armed conflict or an instrumentality of war in time of war. Such military retirement resulting from a combat disability added 20 years of peacetime as well as wartime military service to the amount of his creditable service for civil service annual leave accrual purposes. See 5 U.S.C. § 6303(a). Consequently, the Marine Corps placed Mr. Denton in an 8-hour per pay period leave category. Although the administrative reports are not entirely consistent, the initial date of leave at 8 hours per pay period was apparently November 4, 1979. Since then, his leave accumulation has continued at the 8-hour rate.

Mr. Denton believes his annual leave account should be reconstructed to reflect leave accumulated at 8 hours each pay period retroactive to his appointment on December 18, 1975, because as of that date he considers the amount of his creditable service to have been over 20 years. The Marine Corps has not, however, retroactively credited him at the 8-hour rate. It has left unchanged his accumulation at 4-hour and then 6-hour rates until the service computation date was changed effective November 4, 1979, when it began crediting him with 8 hours of leave each pay period.

Discussion

Subsection 3702(a) of title 31, United States Code, provides that except as otherwise provided by law the Comptroller General shall settle all claims against the United States Government. The Barring Act of October 9, 1940, as amended and now codified at subsection 3702(b), further provides, however, that any such claim must contain the signature and address of the claimant and must be received by the Comptroller General within 6 years from the date it first accrued. Under that provision of law a claim not received in our Office within the 6-year period is barred, notwithstanding that it may have been filed with another Government agency at some earlier time.^{1/} We have no authority to waive any of the provisions of the Barring Act or to make any exceptions to the time limitations it imposes.^{2/}

^{1/} See e.g., Jack C. Smith, et al., 63 Comp. Gen. 594, 596 (1984); and Frederick C. Welch, 62 Comp. Gen. 80, 83 (1982).

^{2/} Frederick C. Welch, supra, 62 Comp. Gen. at 83.

A claim for additional annual leave earned is cognizable by the General Accounting Office and is therefore subject to the Barring Act. Claims cognizable by the General Accounting Office include those for money which are not within the exclusive jurisdiction of another agency to decide.^{3/} Although leave earned and added to a leave account is not immediately convertible to money, the additions to the leave balance are payable in a lump sum upon separation of the employee from the Federal service. 5 U.S.C. § 5551. Alternatively, the increased leave balance from the hours earned permits the employee's absence from duty for additional hours without deduction of money from salary. Finally, claims for annual leave earned are not adjudicated solely by the employing agencies or other Federal office. After initial consideration by the employing agencies, the General Accounting Office has traditionally decided these claims.^{4/} Thus, the Barring Act applies to claims for annual leave credit just as it applies to all other claims cognizable by our Office.

As stated above, the 6-year limitation begins running from the date a claim first accrues. A separate 6-year period ordinarily commences for each 4, 6, or 8 hours of annual leave accrued by a full-time employee serving in a pay status throughout a biweekly pay period. This result follows from the principle that a claim first accrues on the date when all events have occurred which fix the liability of the United States.^{5/} Leave liability is fixed on the date of completing a biweekly pay period in a pay status. 5 C.F.R. §§ 630.202-204. The pay periods when the annual leave accrued in Mr. Denton's case all ended on or before November 3, 1979, and the final 8-hour leave claim accrued by that date.

Accordingly, any claim for the leave in question accrued no later than November 3, 1979, and expired no later than 6 years thereafter on November 3, 1985. The first notice of the leave claim we received was the agency's letter to us received in our Office on November 26, 1985. A claim filed in the General Accounting Office over the signature of the claimant, which would toll the running of the Barring Act,

^{3/} See 42 Comp. Gen. 337, 339 (1963).

^{4/} See, for example, Edmond Godfrey, 62 Comp. Gen. 253 (1983) and Estelle C. Maldonado, 62 Comp. Gen. 545 (1983).

^{5/} 42 Comp. Gen. 337, supra.

has never been received in our Office. Since on November 3, 1985, the claim expired due to the running of the statutory 6-year limitation period, the claim is barred from our consideration and may not be allowed.

for Milton J. Forster
Comptroller General
of the United States